

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE

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DANIEL LOVELACE and  
HELEN LOVELACE, Individually, and as  
Parents of BRETT LOVELACE, deceased,

Plaintiffs,

vs.

NO.: 2:13-cv-02289 dkv  
JURY TRIAL DEMANDED

PEDIATRIC ANESTHESIOLOGISTS, P.A.;  
BABU RAO PAIDIPALLI; and,  
MARK P. CLEMONS,

Defendants.

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**PLAINTIFFS' PRELIMINARY OBJECTIONS TO THE ADMISSIBILITY  
OF EXHIBITS, DEPOSITION TESTIMONY AND WITNESS TESTIMONY  
FILED BY DEFENDANT, MARK P. CLEMONS**

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COME now the Plaintiffs, Daniel Lovelace and Helen Lovelace, Individually, and as  
Parents of Brett Lovelace, deceased, through counsel, and for their Plaintiffs' Preliminary  
Objections to the Admissibility of Exhibits, Deposition Testimony and Witness Testimony of  
Defendant, Mark P. Clemons, and provide to the Court and counsel:

A. **Plaintiffs object to the following Exhibits:**

- 1) PACU demonstrative photos.

Objections/Grounds: Irrelevant; no basis in records of substantial similarity.

- 2) Methodist LeBonheur Hospital/Ortho Clinic medical records.

Objections/Grounds: Irrelevant records.

- 3) Dr. Mark Clemons' medical records.

Objections/Grounds: Agreed as to pre-surgical records.

4) Methodist LeBonheur Hospital medical records.

Objections/Grounds: If agreed as to completeness.

5) Dr. John Buntin's medical records.

Objections/Grounds: Irrelevant. Unrelated to claim/injury/death.

6) Memphis Neurology medical records.

Objections/Grounds: Irrelevant.

7) Braces by Burris (photos and medical records).

Objections/Grounds: Irrelevant.

8) Children's Dental Group records.

Objections/Grounds: Irrelevant.

9) Mid-South Pediatrics medical records.

Objections/Grounds: Irrelevant records.

10) Crittenden Regional Hospital medical records.

Objections/Grounds: Irrelevant records.

11) Dr. Samuel Meredith's medical records.

Objections/Grounds: Irrelevant records.

12) Crossridge Community Hospital medical records.

Objections/Grounds: Irrelevant records.

13) UT Medical Group's medical records.

Objections/Grounds: Irrelevant records.

14) Dr. Clemons' medical illustrations (2).

Objections/Grounds: Irrelevant/unsupported by testimony of Dr. Clemons.

15) State of Tennessee Nursing Board Allegations Report.

Objections/Grounds: Lack of foundation; authentication, Rule 901; hearsay, Rules 801-802; lack of relevant, Rules 401-403, F.R.E.

16) Tennessee Board of Nursing Agreed Order re: Kelly Kish, R.N.

Objections/Grounds: Lack of foundation; authentication, Rule 901; hearsay, Rules 801-802; lack of relevant, Rules 401-403, F.R.E.

17) Crittenden Regional Hospital Mid-South Minor Med medical records of Helen Lovelace.

Objections/Grounds: Hearsay; irrelevant, Rules 401-402; Rule 403, F.R.E.

18) Coast to Coast HealthStop medical records of Helen Lovelace.

Objections/Grounds: Hearsay; irrelevant; Rule 403, F.R.E.

19) Women's Clinic of Forrest City medical records of Helen Lovelace.

Objections/Grounds: Hearsay, Rule 801-802; irrelevant, Rules 401-402, 403, F.R.E.

20) Day Spring Behavioral Services medical records of Helen Lovelace.

Objections/Grounds: Hearsay; irrelevant; Rule 403, F.R.E.

21) Department of Veteran Affairs medical records of Daniel Lovelace.

Objections/Grounds: Hearsay; irrelevant; Rule 403, F.R.E.

**B. Plaintiffs object to the following deposition testimony:**

1) Deposition of Helen Lovelace

Objectionable Portions:

*Page 56:7-14; 56:24; Page 57:1-25; Page 58:1-24; Page 59:1-24; Page 60: 1-20; Page 60:21-24; Page 61:1-4; Page 62:18-24.* [Objectionable inquiry concerning settlement with

third party; such is improper as has previously been stated in pleadings] [Plaintiffs' Response to Defendants, Pediatric Anesthesiologists, P.A., and Babu Rao Paidipalli, M.D.'s Motion to Exclude Opinions of Plaintiffs' Designated Expert Witnesses, Jason Kennedy, M.D. and Robert E. Marsh under F.R.E. 702/*Daubert* and Memorandum of Law in Support of Motion, ¶ 1 states "...second, any such prior settlement is not admissible, nor is it a credit to be used against any verdict against Movant, nor is it a proper discussion here under Tennessee law. T.C.A. § 29-26-119; Varner v. Perryman, 969 S.W.2d 410 (Tenn. Ct. App. 1996); Cullum v. Baptist Health Systems, Inc., 2011 WL 553768 (Tenn. Ct. App. 2011); and Deuel v. The Surgical Clinic, PLLC, 2010 WL 3237297 (Tenn. Ct. App. 2010)].

*Page 63:1-24; Page 98:11-24; Page 99:1-18; Page 100:1-24; Page 101:1-24; Page 102:1-17.* [This inquiry has to do with life insurance, Blue Cross, and how the bills were paid, which are not relevant, Rule 401-402, would be prejudicial, Rule 403, and offered solely to show irrelevant collateral source information.]

*Page 70:3-24; Page 71:1-24; Page 72:1-24; Page 73:6-24; Page 74:1-24; Page 75:1-16; Page 76:6-14; 96:16-24; 97:1-24; 98:1-10.* [Objection/Grounds: Questions asked about Nurse Kelly Kish involvement with the Nursing Board is highly improper, hearsay and prejudicial as well as confusing; Rules 401, 402, 403; foundation lacking, 901; hearsay, 801-802, F.R.E..]

*Page 76:24; 77:1-24; 87:11-19; 102:18-24; 103:1-24.* [Objectionable inquiry concerning settlement with third party; such is improper as has been previously been stated in pleadings] [T.C.A. § 29-26-119; Varner v. Perryman, 969 S.W.2d 410 (Tenn. Ct. App.

1996); Cullum v. Baptist Health Systems, Inc., 2011 WL 553768 (Tenn. Ct. App. 2011); and Deuel v. The Surgical Clinic, PLLC, 2010 WL 3237297 (Tenn. Ct. App. 2010)].

2) Deposition of Daniel Lovelace

Objectionable Portions:

*Page 8:21-24; Page 9:1-4.* [In these questions, Defendants suggest that Daniel Lovelace has been living off a settlement received over his son's death, from some other party. This is an improper line of inquiry. Rule 401-402, 403, F.R.E.

*Page 33:4-7; Page 45:6-18.* [Medical Bills - discount; absence of balance]; irrelevant, lack of foundation, Rules 401-402, 403; 801-802, 901, F.R.E.

*Page 33:14-18.* [Nurse Kish and the licensing board]; lack of foundation, Rule 901; hearsay, Rules 801-902; irrelevant, Rules 401-403, F.R.E.

*Page 36:8-14.* [Amount of income for 2013 of Daniel Lovelace]; irrelevant, Rules 401-403, F.R.E. No claim is made by Mr. Lovelace for lost earnings.

*Page 36:15-24; Page 37:1-19.* [Questions asked about third party settlement are irrelevant, prejudicial and improper] [T.C.A. § 29-26-119; Varner v. Perryman, 969 S.W.2d 410 (Tenn. Ct. App. 1996); Cullum v. Baptist Health Systems, Inc., 2011 WL 553768 (Tenn. Ct. App. 2011); and Deuel v. The Surgical Clinic, PLLC, 2010 WL 3237297 (Tenn. Ct. App. 2010)].

*Page 44:5-10.* [Questions asked about Nurse Kish and the Nursing Board]; lack of foundation, Rule 901; hearsay, Rules 801-902; lack of relevance, Rules 401-403, F.R.E.

C. **Plaintiffs object to the Witness Testimony of the following:**

1. Dr. Jay Werkhaven - Plaintiffs' Partial Motion in Limine to Exclude Defendant, Mark P. Clemons', Proposed Expert Witness Testimony of Jerome Thompson, M.D., Jay Werkhaven, M.D., Dianne Dowdy, R.N. and Edward L. Brundick, III at Trial and Brief. [D.E. 127]. The witness has not supplemented his expert proof.

2. Dr. Jerome Thompson - Plaintiffs' Partial Motion in Limine to Exclude Defendant, Mark P. Clemons', Proposed Expert Witness Testimony of Jerome Thompson, M.D., Jay Werkhaven, M.D., Dianne Dowdy, R.N. and Edward L. Brundick, III at Trial and Brief. [D.E. 127]. The witness has not supplemented his expert proof.

3. Edward Brundick, III, CIME, CFP - See Plaintiffs' Partial Motion in Limine to Exclude Defendants', Babu Rao Paidipalli and Pediatric Anesthesiologists, P.A. Proposed Expert Witness Testimony of Timothy W. Martin, M.D., Ira Landsman, M.D., Dwayne Accardo, Diane Dowdy and Edward L. Brundick, III, at Trial and Brief. [D.E. 126]. The witness has not supplemented his expert proof.

4. Kelly Kish, R.N. – The Court has held [D.E.118] that Dr. Clemons may not fault or blame Nurse Kish; accordingly, objection is hereby made to Clemons' efforts to use the testimony of Kish as an affirmative defense.

5. Diane Dowdy, R.N. - See Plaintiffs' Partial Motion in Limine to Exclude Defendants', Babu Rao Paidipalli and Pediatric Anesthesiologists, P.A. Proposed Expert Witness Testimony of Timothy W. Martin, M.D., Ira Landsman, M.D., Dwayne Accardo, Diane Dowdy and Edward L. Brundick, III, at Trial and Brief. [D.E. 126]. Dr. Clemons will attempt to use Nurse Dowdy to place fault on LeBonheur/Nurse Kish. By previous Order of this Court, Clemons' affirmative defense of third-party fault was stricken. [D.E. 118].

6. Dr. Timothy Martin - See Plaintiffs' Partial Motion in Limine to Exclude Defendants', Babu Rao Paidipalli and Pediatric Anesthesiologists, P.A. Proposed Expert Witness Testimony of Timothy W. Martin, M.D., Ira Landsman, M.D., Dwayne Accardo, Diane Dowdy and Edward L. Brundick, III, at Trial and Brief. [D.E. 126]. The witness has not supplemented his expert proof.

7. Dr. Ira Landsman - See Plaintiffs' Partial Motion in Limine to Exclude Defendants', Babu Rao Paidipalli and Pediatric Anesthesiologists, P.A. Proposed Expert Witness Testimony of Timothy W. Martin, M.D., Ira Landsman, M.D., Dwayne Accardo, Diane Dowdy and Edward L. Brundick, III, at Trial and Brief. [D.E. 126]. The witness has not supplemented his expert proof.

8. Dwayne Accardo, CRNA - See Plaintiffs' Partial Motion in Limine to Exclude Defendants', Babu Rao Paidipalli and Pediatric Anesthesiologists, P.A. Proposed Expert Witness Testimony of Timothy W. Martin, M.D., Ira Landsman, M.D., Dwayne Accardo, Diane Dowdy

and Edward L. Brundick, III, at Trial and Brief. [D.E. 126]. The witness has not supplemented his expert proof.

Respectfully submitted,

**HALLIBURTON & LEDBETTER**

/s/ Mark Ledbetter

Mark Ledbetter (#17637)

Attorney for Plaintiffs

254 Court Avenue - Suite 305

Memphis, TN 38103

(901) 523-8153-phone

(901) 523-8115-fax

[Mark794@aol.com](mailto:Mark794@aol.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been properly served upon all counsel of record identified below via the Court's ECF filing system.

J. Kimbrough Johnson/Marcy Dodds Magee/Margaret Cooper

2900 One Commerce Square

40 S. Main Street

Memphis, TN 38103

Attorneys for Mark Clemons

901/525-8721-phone

901/525-6722-fax

[jjohnson@lewisthomason.com](mailto:jjohnson@lewisthomason.com)

[mmagee@lewisthomason.com](mailto:mmagee@lewisthomason.com)

[mcooper@lewisthomason.com](mailto:mcooper@lewisthomason.com)



Brad Gilmer/Jerry Potter/Karen Poplon/David Cook  
The Hardison Law Firm  
119 S. Main Street, Suite 800  
Memphis, TN 38103  
Attorneys for Babu R. Paidipalli & Pediatric Anesthesiologists, P.A.  
901/525-8776 – phone  
901/525-8790 – fax  
[Bgilmer@hard-law.com](mailto:Bgilmer@hard-law.com)  
[jpotter@hard-law.com](mailto:jpotter@hard-law.com)  
[kkoplon@hard-law.com](mailto:kkoplon@hard-law.com)  
[dcook@hard-law.com](mailto:dcook@hard-law.com)

This 2<sup>nd</sup> day of January, 2015.

/s/ Mark Ledbetter  
Mark Ledbetter, Certifying Attorney